

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA, ex rel, W.A. DREW  
EDMONDSON, in his capacity as ATTORNEY  
GENERAL OF THE STATE OF OKLAHOMA,  
et al.,

Plaintiff,

v.

Case No. 4:05-CV-329-JOE-SAJ

TYSON FOODS, INC., et al.,

Defendants.

**DEFENDANTS' MOTION TO STAY PROCEEDINGS AND INTEGRATED  
OPENING BRIEF IN SUPPORT AND REQUEST FOR EXPEDITED HEARING**

COME NOW Defendants, Tyson Foods, Inc.; Tyson Poultry, Inc.; Tyson Chicken, Inc.; Cobb-Vantress, Inc.; Cal-Maine Foods, Inc.; Cal-Maine Farms, Inc.; Cargill, Inc.; Cargill Turkey Production, LLC.; George's, Inc.; George's Farms, Inc.; Peterson Farms, Inc.; Simmons Foods, Inc.; and Willow Brook Foods, Inc. (collectively, "Defendants"), pursuant to FED. R. CIV. P. 7 and LCvR7.1 and, by and through their attorneys, hereby move this Court to enter an order staying all proceedings in this matter, pending the outcome of *State of Arkansas v. State of Oklahoma*, an original action filed in the United States Supreme Court on November 3, 2005. As support for their Motion, Defendants state the following.<sup>1</sup>

**I. INTRODUCTION**

In this case, the State of Oklahoma ("Oklahoma") has asserted a number of federal and state claims against Defendants. The gravamen of Oklahoma's claims is that independent contractor owners or operators of poultry-growing operations in Arkansas

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<sup>1</sup> The Defendants have conferred with the State of Oklahoma and can represent to the Court that the State of Oklahoma objects to this Motion.

and Oklahoma have caused pollution in the Illinois River Watershed (“IRW”) – a river basin covering more than a million acres almost equally divided between Oklahoma and Arkansas – relating to the use and management of poultry litter, and that the Defendants should be held responsible for the actions of those independent contractor growers.

The Arkansas Attorney General has filed a Motion for Leave to File Bill of Complaint and Bill of Complaint with the United States Supreme Court (“the Supreme Court Action”) seeking to enjoin Oklahoma’s prosecution of its pollution-based claims before this Court. *See State of Arkansas v. State of Oklahoma*, Motion for Leave to File Bill of Complaint and Bill of Complaint, No. 220133 Original (2005), attached hereto as Exhibit “A.” Arkansas’s Motion is now pending before the Supreme Court and, under the Supreme Court’s Rules, Oklahoma has sixty (60) days to respond. *See* Sup. Ct. R. 17.5. Arkansas will then have ten (10) days to file a reply, at which point the Supreme Court may grant or deny the Motion for Leave to File Bill of Complaint, set it for oral argument, direct that additional documents be filed, or require that other proceedings be conducted. *See id.*

In the Supreme Court Action Arkansas argues, and Defendants agree, that the instant case is fundamentally an interstate water quality dispute between the sovereign States of Oklahoma and Arkansas regarding the regulation of certain agricultural practices within the shared IRW. Arkansas’s request for relief from the Supreme Court rests, in part, upon Arkansas’s belief that Oklahoma is asking this Court to grant injunctive relief that would reach beyond Oklahoma, and effectively allow Oklahoma to usurp Arkansas’ authority by regulating otherwise lawful agricultural practices in Arkansas. Moreover, Arkansas also argues that maintenance of the above-captioned

matter will allow Oklahoma to avoid the States' long-standing, congressionally-approved procedures for addressing interstate water pollution.

In 1970, Arkansas and Oklahoma negotiated and entered into an interstate compact - the Arkansas River Basin Compact (the "Compact") - to address issues of water quality and apportionment in the Arkansas River Basin. *See* ARK. CODE ANN. § 15-23-401 and OKLA. STAT., tit. 82, § 1421.<sup>2</sup> Included within the purview of the Compact is the IRW, the very watershed at issue in the above-captioned matter. *See* OKLA. STAT., tit 82, § 1421. The Compact is administered by a Commission comprised of three representatives from each State and, at times, one non-voting, federal representative appointed by the President. Over the past several years, the Commission has engaged in a number of activities aimed at addressing pollution concerns in and around the IRW. Arkansas asserts that Oklahoma's litigation before this Court constitutes a breach of Oklahoma's contractual obligations under the Compact by circumventing the States' agreed-upon process for addressing water quality issues in the IRW.<sup>3</sup>

In addition to seeking relief under the Compact, Arkansas also asserts multiple constitutional claims, arguing that Oklahoma's lawsuit against Defendants violates the Commerce Clause and basic constitutional principles of federalism, including such

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<sup>2</sup> Revised on March 3, 1972, the Compact was subsequently ratified by Congress on November 13, 1973. Arkansas River Basin Compact, Pub. 2, No. 93-152, 87 Stat. 569 (1970).

<sup>3</sup> The question of whether the Compact precludes Oklahoma's pollution-based claims in this action is the subject of at least one pending motion to dismiss this case. *See* Peterson Farms, Inc.'s Motion to Dismiss and, or in the Alternative, Motion to Stay Proceedings Pending Appropriate Regulatory Agency Action, and Brief in Support, Docket No. 75 at 16-21.

fundamental tenets as State sovereignty and due process.<sup>4</sup> Because the Supreme Court has original and exclusive jurisdiction over these types of controversies between States, this Court is without power to hear Arkansas's constitutional and State sovereignty claims. *See* 28 U.S.C. § 1251(a) ("The Supreme Court shall have original and exclusive jurisdiction of all controversies between two or more States."); *Mississippi v. Louisiana*, 506 U.S. 73, 77-78 (1992) ("Though [Section 1251(a) is] phrased in terms of a grant of jurisdiction to this Court, the description of our jurisdiction as 'exclusive' necessarily denies jurisdiction of such cases to any other federal court.")

Based upon these constitutional and Compact-based claims, Arkansas has asked the Supreme Court: (1) to declare that Oklahoma's attempt to enforce its laws in Arkansas violates the Commerce Clause, the Due Process Clause of the Fourteenth Amendment, and/or the sovereignty guaranteed co-equal States by the United States Constitution, and to enjoin Oklahoma from projecting its statutory and common laws and regulations into Arkansas; and (2) to declare that the Compact requires Oklahoma to present its grievances to the Compact Commission before seeking relief in district court, and to enjoin Oklahoma from prosecuting its pollution-related claims before this Court until it has exhausted its administrative remedies before the Compact Commission. *See* Exhibit A, at 16.

Considering the relief sought by Arkansas, the outcome of the Supreme Court Action is likely to significantly impact, if not completely preclude, the claims asserted by

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<sup>4</sup> These issues have likewise been asserted as affirmative defenses in several of the Defendants' Answers to Plaintiffs' First Amended Complaint. *See, e.g.,* Answer and Affirmative Defenses of Defendants Tyson Foods, Inc., Tyson Poultry, Inc., Tyson Chicken, Inc., and Cobb-Vantress, Inc. to the First Amended Complaint, Docket No. 73 at 29.

Oklahoma in this action. Consequently, this Court should stay these proceedings pending the outcome of the Supreme Court Action because a stay will promote judicial economy, facilitate an orderly resolution of disputed issues, and allow all of the parties (including the numerous third-party defendants) to conserve their respective resources.<sup>5</sup>

## II. BRIEF IN SUPPORT

A district court's inherent power to control its own docket includes the grant of broad discretion to stay proceedings where the court determines it is warranted by the circumstances. *See Clinton v. Jones*, 520 U.S. 681, 706 (1997). "[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. North Am. Co.*, 299 U.S. 248, 254 (1936), quoted in *United Steelworkers of Am. v. Oregon Steel Mills, Inc.*, 322 F.3d 1222, 1227 (10<sup>th</sup> Cir. 2003). In assessing whether a stay should be granted based upon the existence of a related proceeding, district courts should consider: (1) whether the moving party is likely to prevail in the related proceeding; (2) whether, absent a stay, the moving party will suffer irreparable harm; (3) whether the issuance of a stay will cause substantial harm to the other parties to the proceeding; and (4) the public interests at stake. *See United Steelworkers*, 322 F.3d at 1227. District courts should not apply these factors in a

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<sup>5</sup> Defendants Tyson Foods, Inc., Tyson Poultry, Inc., Tyson Chicken, Inc., Cobb-Vantress, Inc., Peterson Farms, Inc., Willow Brook Foods, Inc., George's, Inc., George's Farms, Inc., and Simmons Foods, Inc. filed a Third Party Complaint on October 4, 2005 and are currently in the process of serving the one hundred and sixty-one (161) third-party defendants named therein. *See Third Party Complaint*, Docket No. 80. If this Court issues an order staying these proceedings pending the outcome of the Supreme Court Action, Defendants request that the Court also expressly stay and toll any requirement that Defendants must effect service upon the third-party defendants during the pendency of the stay requested herein. This will avoid any unnecessary expenditure of time and resources on the part of the third-party defendants.

formulaic, narrow, or mechanical manner. *See Landis v. North Am. Co.*, 299 U.S. at 255. Instead, the district court must consider the unique circumstances of the case and exercise its judgment in a manner that best serves the administration of justice. *See id.*

Application of each of these factors demonstrates that the Court should stay this proceeding. As to the first, - *i.e.*, whether the moving party is likely to prevail in the related proceeding - Defendants acknowledge that they are not parties to the Supreme Court Action. Nonetheless, Defendants' motion is proper because some of the Defendants are Arkansas corporations whose interests are being indirectly protected by Arkansas's assertion of arguments as *parens patriae* on behalf of Arkansas citizens. *See* Exhibit A, Motion for Leave to File Bill of Complaint, at 1, 19, fn. 4; Bill of Complaint at ¶ 7; *and Landis v. North Am. Co.*, 299 U.S. at 254 (holding that a district court may properly stay a matter pending resolution of a related case even when the related litigation does not involve identical parties or issues). Because this case represents a blatant attempt by Oklahoma to impose its legal standards beyond the borders of the State, in violation of both the Constitution and the Compact, the likelihood of Arkansas prevailing in the Supreme Court Action is great. *See, e.g., C & A Carbone, Inc. v. Clarkstown*, 511 U.S. 383, 393 (1994) (prohibiting extraterritorial application of regulations that affect interstate commerce); *Nebraska v. Iowa*, 406 U.S. 117, 118 n. 1 (1972) (noting that the Court has "final power to pass upon the meaning and validity of [interstate] compacts"). Therefore, because success for Arkansas before the Supreme Court would preclude this case from proceeding, staying this litigation is proper because it will avoid an unnecessary waste of this Court's and the litigants' limited resources, and thereby serve the best interests of all involved.

The second factor also counsels in favor of granting Defendants' Motion to Stay. In its case before this Court, Oklahoma seeks a permanent injunction requiring the Defendants to "immediately abate their pollution-causing conduct in the IRW." *See* First Amended Complaint, at § VI, ¶ 3. Defendants deny engaging in, or responsibility for, any alleged "pollution-causing conduct." Therefore, if this Court denies Defendants' Motion to Stay and grants Oklahoma's requested relief, Defendants will suffer irreparable harm if held liable for the actions of independent contract owners or operators of poultry growing operations (actions for which Defendants deny any responsibility) and required to implement injunctive relief (which Defendants deny they should be required to effect). Moreover, if this Court were to enjoin the application of poultry litter within the IRW, thousands of cattle ranchers and poultry farmers in the IRW who, in keeping with the requirements of Oklahoma and Arkansas laws, use poultry litter in their agricultural operations as a soil amendment and fertilizer would suffer significant economic harm through increased operational expenses.

Even if this action did not proceed to a judgment while the Supreme Court Action is pending, both Oklahoma and Defendants would suffer irreparable harm by continuing to incur significant costs defending litigation which is likely to be barred in whole or in part on constitutional and/or Compact grounds. Moreover, litigating both actions simultaneously offers no opportunity for efficiency or cost savings and instead presents the grave risk of inconsistent records and remedies. Ultimately, of course, the Supreme Court's decision would prevail in the event of a conflict, but multiple, simultaneous litigation of the facts and law relating to this interstate water dispute would still make no sense, even if there were no risk of competing and inconsistent court judgments. Given

these concerns, the parties will be subject to potentially significant and irreparable harm if the stay is not granted.

As to the third factor, Oklahoma would not be prejudiced or subjected to any tactical disadvantage by the issuance of a stay. In fact, the citizens of Oklahoma would arguably benefit from a stay because the State's limited public resources would be conserved while the Supreme Court determines whether this Court may hear Oklahoma's claims. In response to Defendants' Motion to Stay, Oklahoma is likely to argue that it would be harmed by *any* delay. However, such arguments are suspect given the slow pace with which Oklahoma has proceeded on issues involving the IRW over the years and the fact that even during a stay, Oklahoma could at any time protect itself against delay by proceeding immediately under the terms of the Compact.

Lastly, preservation of important public interests weighs heavily in favor of granting Defendants' Motion to Stay. Oklahoma's action seeks to impose extraterritorial, inconsistent obligations upon Arkansas's agricultural community and to deny Arkansas citizens their rights and privileges secured through the Compact and the United States Constitution. At its most fundamental level, Oklahoma's action seeks to impose requirements and legal liability upon Arkansas citizens whose behavior is occurring exclusively within Arkansas and which is completely lawful in Arkansas. Thus, this lawsuit contravenes the most basic tenet of federalism incorporated into the constitutional bargain between the States, as well as the due process protections afforded to the citizens of all States against the imposition of inconsistent and conflicting extraterritorial State regulation. *See State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 421 (2003). A stay is therefore necessary to prevent Arkansas citizens from being required to respond



to Oklahoma's constitutionally impermissible claims.

There is also a strong public interest in the orderly administration of judicial claims. If the litigation in this Court and the Supreme Court Action were to continue simultaneously, it would result in an unnecessary and wasteful duplication of judicial effort and create the very real risk of the parties being subject to inconsistent judgments on issues of fact or law.

In sum, considerations of judicial economy and efficiency, as well as the strength and gravity of Arkansas's constitutional and Compact claims asserted in the Supreme Court Action, compel this Court to stay the instant proceeding pending the outcome of the Supreme Court Action. If the Supreme Court determines that Oklahoma's lawsuit is improper and that Oklahoma's claims should appropriately be pursued under the terms of the Compact, this action will be barred or, at a minimum, Oklahoma's claims will be significantly restricted. No party will suffer significant harm by staying this matter. Accordingly, this Court should exercise its discretion to stay these proceedings because (1) a stay will respectfully allow the Supreme Court to address the issues presented in the Supreme Court Action without the threat of inconsistent factual development from this Court, and (2) a stay will allow this Court and the litigants to recognize a significant economy of time and effort.

### **III. CONCLUSION**

For the reasons stated herein, Defendants respectfully request this Court to enter an order:

1. Staying all proceedings in this action;

2. Tolling the time period in which Defendants must serve their Third Party Complaint;
3. Tolling the notice and filing deadlines set forth in Oklahoma's Governmental Tort Claims Act, OKLA. STAT., tit 51, § 151, *et seq.*; and
4. Tolling any other applicable service and filing deadlines and statutes of limitation not expressly set forth above,

pending the United States Supreme Court's decision in *State of Arkansas v. State of Oklahoma*. Defendants also respectfully request this Court to set their Motion for expedited hearing at the Court's earliest convenience, and to grant Defendants such other and further relief as the Court deems just and proper under the circumstances.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 14th day of November, 2005, I electronically transmitted the foregoing document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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